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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor.

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

In re:

USA SECURITIES, LLC,
Debtor.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**RESPONSE TO NOTICE OF
HEARING REGARDING THIRD
OMNIBUS OBJECTION OF THE
USACM LIQUIDATING TRUST TO
CLAIMS ASSERTING
PRIORITY STATUS**

Date: April 26, 2007
Time: 9:30 a.m.

Daniel Oberlander ("Oberlander"), by and through his counsel, files this Response ("Response") to the Third Omnibus Objection of the USACM Liquidating Trust ("Trust") to Claims Asserting Priority Status ("Objection") on the following grounds:

1 1. Both pre and postpetition Oberlander was an employee of USA Commercial
2 Mortgage (the "Debtor"), performing weekly cleaning and janitorial services ("Services") at the
3 Debtor's 4480 Pecos Road and 4484 Pecos Road locations.

4 2. On account of such Services, Oberlander was paid a salary of \$1,375 for the 4480
5 Pecos Road location and a salary of \$1,575 for the 4484 Pecos Road location.

6 3. Oberlander was also reimbursed for his expenses incurred with the Services,
7 including, but not limited to, reimbursement for the purchase of cleaning supplies.

8 4. In his normal course of employment, Oberlander performed his Services for the
9 period of April 1 through April 13, 2006. Oberlander has not been paid for the Services
10 performed during that period.

11 5. Section 507(a)(4) provides a fourth priority claim for wages, salaries and
12 commissions earned by an individual within 180-days before the date of the filing of the petition
13 up to maximum benefit of \$10,000.

14 6. The purpose of allowing a priority for wages is to alleviate hardship on workers
15 who lose their jobs or part of their salary by bankruptcy. Additionally, the wage priority scheme
16 encourages employees to stand by an employer in financial difficulty.

17 7. The wage priority of Section 507(a)(4) also extends to reimbursement of expenses
18 related to such employment. See *In re Columbia Packing Co.*, 35 B.R. 447 (Bankr. D. Mass.
19 1983) (claim for expense reimbursement considered close enough to salary and wages to be
20 included within priority).

21 8. Oberlander was an employee of the Debtor and received payment directly from
22 the Debtor. Moreover, the Debtor controlled and directed Oberlander as to the Services he
23 performed.

24 9. Under Nevada law, services performed by a person for wages "shall be deemed to
25 be employment subject to [NRS 612.085]" unless it is shown to the satisfaction of the
26 Administrator that certain conditions, which are not applicable here, exist. NRS § 612.085.

27 10. Accordingly, Oberlander is entitled to an unsecured priority claim for the Services
28 performed, all as set forth in the timely and properly filed and supported priority claim.

Response to Third Omnibus objection.doc

WHEREFORE, for the foregoing reasons, Oberlander respectfully requests that the Court enter an Order:

- A. Allowing, as a Chapter 11 fourth priority expense, Oberlander's claim for \$1,482.58;
- B. Overruling the Trust's Objection to Oberlander's priority claim; and
- C. Granting such other relief as this Court deems just and appropriate.

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By: /s/ Kelly J. Brinkman
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